

BART CANNON

IBLA 81-196

Decided August 31, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring the Vesper Garnet mining claim abandoned and void. OR MC 9101.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Assessment Work

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the

due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: Bart Cannon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bart Cannon has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated September 10, 1980, which declared appellant's mining claim, the Vesper Garnet (OR MC 9101), abandoned and void for failure to file evidence of annual assessment work or a notice of intention to hold the claim pursuant to section 314(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4.

Upon receipt of this decision, appellant submitted to BLM evidence of assessment work for the 1979 and 1980 assessment years which was received by BLM on October 8, 1980. BLM thereupon reconsidered and reaffirmed its decision reciting that the claim is deemed abandoned and void for failure to file evidence of assessment work with BLM in 1979. The supplemental decision erroneously stated that evidence of assessment work for this claim had to be filed with BLM by October 22, 1979 (rather than on or before December 30, 1979).

In his statement of reasons for appeal appellant asserts that he did in fact perform his assessment work on the claim, filed an affidavit of proof of labor at the Snohomish County Court House, and mailed a similar affidavit to the BLM office.

Appellant's mining claim was located on August 3, 1978, and filed for recordation with BLM on October 30, 1978. No evidence of annual assessment work or notice of intention to hold was filed with BLM prior to December 31, 1979. On October 8, 1980, appellant submitted to BLM a copy of an affidavit of proof of labor for the Vesper Garnet claim which was recorded with Snohomish County on October 4, 1979.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Appellant's claim was located after October 21, 1976, in calendar year 1978. Thus, one or the other of the documents had to be filed prior to December 31, 1979, the year following the calendar year in which the claim was located, in order to meet the requirements of the law. The statute requires that the instrument be filed both in the office of the state where the location

notice or certificate is recorded, and in the office of the Bureau designated by the Secretary. 43 U.S.C. § 1744(a) (1976). When appellant failed to file timely either an affidavit of assessment work or notice of intention to hold, BLM properly held the claim to have been abandoned and declared it void. Robert R. Eisenman, 50 IBLA 145 (1980).

[2] With regard to appellant's assertion that his affidavit of proof of labor was lost after being deposited in the United States mails, the Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f); Amanda Mining & Manufacturing Association, *supra*. In the absence of evidence that BLM did timely receive evidence of assessment work performed on appellant's claim, BLM properly declared the claim abandoned and void. Gary L. Barton, 47 IBLA 386 (1980). This Board has no authority to excuse lack of compliance with the statute or to afford relief from statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

